

Withdrawal/Redaction Sheet

Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|--------------------------|--|-----------------------|--------------------|
| 001a. letter | Bernard Nussbaum to John Conyers, Jr. and William Clinger re: Records of the President's Task Force on National Health Care Reform (7 pages) | 10/25/1993 | P5 731 |
| 001b. fax cover sheet | Jeff Gutman to Stephen Neuwirth [partial] (1 page) | 10/22/1993 | P6/b(6) |
| 001c. memo | David J. Anderson to Stephen Neuwirth re: Response to the House Committee on Government Operation's Letter of October 21 (6 pages) | 10/22/1993 | P5 732 |

COLLECTION:

Clinton Presidential Records
Counsel's Office
Cerf, Chris and Divoll, Vicki
OA/Box Number: 10495

FOLDER TITLE:

Meeting with Rep. Clinger - 12/93

Kelly Hendren
2006-0225-F
kh256

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

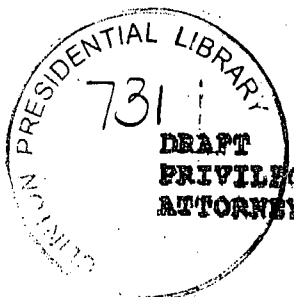
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DRAFT
PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT/WORK PRODUCT

October 25, 1993

Honorable John Conyers, Jr.
Chairman
William F. Clinger, Jr.
Ranking Minority Member
Committee on Government Relations
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

IN ADDITION, WE REFUTE ALLEGATIONS
IN THE PRESS THAT THE GOVERNMENT
DOES NOT KNOW WHO CONTROLLED OFFICE
FEDS, IS UNAWARE OF PAYMENTS TO
CONSULTANTS, MAINTAINED INACCURATE
PAYROLL AND EXPENSE RECORDS AND
CANNOT RETRACE WHO SERVED ON THE
TASK FORCE AND THE INTERDEPARTMENTAL
WORKING GROUP.

Gentlemen:

We have received your letter, dated October 21, 1993,
concerning records of the President's Task Force on Health Care
Reform.

As stated in your letter, your inquiry to us arises from
"recent press reports" -- Specifically, we understand, an
article, dated October 21, in the Washington Times. Your letter
also asserts that "troubling questions" may exist "about the
failure to comply with the instructions of Federal District Judge
Royce C. Lamberth to maintain these records."

We are providing this response to ^{APPARENTLY} eliminate the
~~misunderstanding~~ that the Washington Times story has ~~apparently~~
generated. As shown below, the government has maintained the
records that are the subject of your inquiry. Indeed, as
discussed below, Judge Lamberth already determined that, in light
of the extraordinary steps taken by the government to maintain
these records, no court intervention was necessary to ensure
their maintenance. <sup>CORRECT SERIOUS INACCURACIES IN
PROCEDURES
IN PLACE
TO</sup>

* * *

STATUS OF THE FACA LITIGATION

The ^{CIRCUIT} United States Court of Appeals for the District of
Columbia held on June 22, 1993, that the President's Health Care
Task Force -- the 12 member committee composed of the First
Lady, 6 cabinet secretaries and 5 senior White House
officials -- ~~is~~ not subject to the Federal Advisory Committee Act
("FACA"). This unambiguous ruling meant that none of the FACA's
requirements -- including requirements for open meetings and
public dissemination of documents -- apply to the Task Force.

The United States District Court for the District of
Columbia had previously determined that the separate
interdepartmental working group -- composed of over 500

AMONG THESE 5
ARE TAYLOR
AND TYSON. I
DON'T KNOW WHETHER
THEY HAVE
CASINO STAKE.

WAS

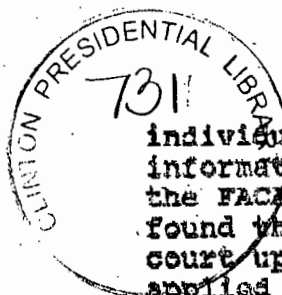
54
UNION,
7 F.2d
48
C.C.1.
993)

On March 10

SIMILARLY

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: KBH DATE: 9/03/08

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AAPS v. CLINTON,
813 F. Supp. 82
(D.C. 1993)

individuals who gathered information for, and provided information to, the Task Force -- was ~~initially~~ not subject to the FACA. In its June 22 opinion, however, the Court of Appeals found there had not been a sufficient record before the district court upon which to make a determination as to whether FACA applied to this working group.

WAS
The Court of Appeals therefore remanded to the district court the limited question of whether the interdepartmental working group -- as opposed to the Task Force itself -- was subject to the FACA. In remanding the case to the district court, the Court of Appeals made no findings on whether the working group ~~is~~ indeed subject to the FACA. The Court of Appeals noted, though, that "it is a rare case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch." The Court of Appeals also observed, among other things, that "[t]he working groups, as a whole, seem more like a horde than a committee" of the type that is subject to the FACA. Id.

AAPS, 971 F.2d at 914.

The Court of Appeals stated that, to resolve the issue of whether the FACA applies to the interdepartmental working group, the district court should permit expedited discovery to determine the working group's purpose, structure, and personnel. ~~The Court of Appeals~~ also remanded proceedings related to this discovery are currently pending before the district court (and are discussed more fully below). FOR DISCOVERY

THE DISTRICT COURT ALREADY DETERMINED THAT THE GOVERNMENT WAS TAKING SUFFICIENT STEPS TO PRESERVE HEALTH CARE MATERIALS

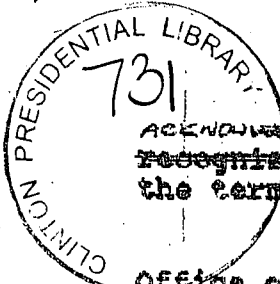
WHETHER THE SPECIAL GOVERNMENT EMPLOYEES ON THE WORKING GROUP WERE "FULL TIME" AND THE DEGREE OF PARTICIPATION OF THE WORKING GROUP'S CONSULTANTS.
AAPS

On June 15, 1993, the plaintiffs in the ~~pending Task Force litigation~~ asked Judge Lamberth to enter an order requiring the government to maintain documents of the Health Care Task Force and the interdepartmental working group. The plaintiffs' motion was based principally on an unsubstantiated report in the Washington Times suggesting that the government was shredding certain Task Force documents.

MOTION WAS FILED BEFORE THE 6th CIRCUIT

Although Judge Lamberth did enter a preliminary order that day in response to the ~~Washington Times story~~, the government was soon thereafter able to demonstrate that the Washington Times' report of shredding was totally baseless.

Moreover, the government explained to Judge Lamberth that, long before plaintiffs' ~~June 15~~ motion, the Task Force and interdepartmental working group had already taken extraordinary steps -- including a lengthy oral presentation to ~~all~~ working group members and special written instructions for ~~all~~ Task Force and working group members -- to ensure that all Task Force and working group documents ~~would~~ be preserved. The government, ~~however~~, nevertheless



ACKNOWLEDGED
recognized its continuing obligation to maintain records under the terms of the Presidential Records Act.

In addition, the government showed that the White House Office of Records Management had already been accountable for, and taken steps to preserve, Task Force and working group materials as they were delivered to that Office for long-term storage and preservation. The government noted that the Director of the White House Office of Records Management serves as the custodian of all Presidential records and has been, and remains, the appropriate custodian of Task Force and working group documents.

Based on the government's showing, Judge Lamberth entered a written order on June 22, 1993, confirming his satisfaction with the steps taken by the government to maintain materials received and created by the Task Force and interdepartmental working group. Judge Lamberth's June 22 order effectively rescinded his June 15 order concerning records preservation, and stated that no further Court intervention was required to ensure maintenance of the records at issue. Specifically, the court stated:

[D]efendants have satisfied the court that every document is being preserved. Defendants have nominated one White House official -- [the Director of Records Management] -- as the custodian of all the documents relevant to this case. Defendants have also committed themselves to preserving all documents, and to that end have instituted procedures for ensuring that all documents are maintained and documented.

Thus, the court is satisfied that there is no basis for issuing a preservation order at this time. . . . It is hereby ORDERED that the court's order of June 15, 1993, is RESCINDED.

-- Memorandum opinion and order,
July 22, 1993

THE GOVERNMENT HAS CONTINUED TO
PRESERVE THE RECORDS OF THE
TASK FORCE AND WORKING GROUP

At no time has the government terminated its practice of preserving all records of the Task Force and working group. Nor has the Judge Lamberth or any other Court made any findings even suggesting that the government has failed to fulfill any legal obligation to maintain those records. Indeed, since Judge Lamberth ruled on July 22 that he would take no action to compelling the preservation of documents, the plaintiffs in the pending

RESCINDED HIS ORDER

IMPLEMENT AND FOLLOW PROCEDURES TO REVIEW

THE CONTINUED TO ENSURE THE

I'M A BIT UNCOMFORTABLE
WING THAT ALL DOCUMENTS HAVE
BEEN PRESERVED, AND HAVE NO
REAL DUBB WHAT CONC. STAFFERS
7 AGONY EMPLOYEES ARE DOING.
THOSE WHO CAN SAY IS THAT THESE
CENTERS ARE IN PLACE

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CLINTON PRESIDENTIAL LIBRARY
731

THE DISCOVERY HAS BEEN WITH RECORDS OF
SEES/CONSULTANTS. THIS PARAGRAPH
BLUES THE DISTINCTION BETWEEN PERMANENT
RECORDS + SEES. WHAT ABOUT THE CANCELS/RECORDS?

NOTE OF THE WHITE
HOUSE SEE/CONS LOGS
PAG. 90 THERE
SHE'S SAYING
RECORDS
AT DEPT.

litigation have never again moved the Court for any order to
compel the preservation of any materials.

The government has retained, among other things, all
records relating to membership on the Task Force and working
group; personnel and payroll; expense vouchers; ethics or other
conflict of interest statements; and procurement. The government
has also preserved any meeting minutes or agendas that were
created by the Task Force or interdepartmental working group.

As you know, membership on the interdepartmental
working group included employees of the White House and several
federal agencies (including the Departments of Health and Human
Services, the Treasury, Commerce, Justice, Defense and Veterans
Affairs) [any others?]. Records relating to personnel, payrolls
and expenses of these members have been maintained at the Old
Executive Office Building or at the departments where working
group members were employed. Records relating to ethics and
conflict of interest matters have similarly been retained at the
Old Executive Office Building or at the departments where working
group members were employed. Substantive working group documents
are, for the most part, stored at the White House Office of
Records Management or other locations in the Old Executive Office
Building. The Records Management Office delivered formal written
requests to all working group members for the return of
documents, which the Office continues to receive.

LA FOR
GMB
GCA
FTC
OPM

HHS
only

We are not aware of any "inventories" of records of the
Health Care Task Force or the interdepartmental working group.

**THE WASHINGTON TIMES REPORT
ON OCTOBER 21 MISCHARACTERIZED
THE PENDING DISCOVERY PROCEEDINGS
BEFORE THE FEDERAL DISTRICT COURT**

As discussed above, the Court of Appeals for the
District of Columbia has remanded to the District Court the
question of whether the interdepartmental working group (as
opposed to the Health Care Task Force itself) is subject to the FACA.
Federal Advisory Committee Act. As also discussed above, the
Court of Appeals directed the District Court to permit discovery
concerning the "purpose, structure and personnel of the group."

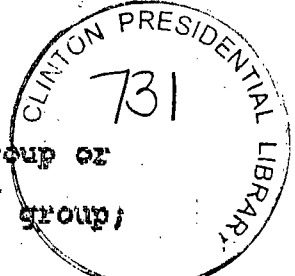
The plaintiffs in the pending suit have therefore
formulated certain discovery requests. Contrary to assertions
in the October 21 Washington Times story, the government has
produced the information that is responsive to the plaintiffs'
requests and relevant to the working group's purpose, structure
and personnel. Thus, in over _____ pages of information, the
government has, among other things:

SEE?

IN AN EXTENSIVE
DISCOVERY REQUESTS,
EXPLAINED AS
APPROPRIATE,

THE WHITE HOUSE OFFICE OF
RECORDS MANAGEMENT HAS MAILED
FORMAL REQUESTS TO ALL WORKING GROUP
MEMBERS TO PRODUCE RELEVANT DOCUMENTS TO
PARTICIPATE TO PRESERVATION AND STORAGE.
CONTINUING TO RECEIVING THOSE
OTHER WORKING GROUP DOCUMENTS
IN THE

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produced lists of the participants on the interdepartmental working group, each subgroup or "cluster group," each audit group, and each consumer and health professional "outreach" group;

identified which of the special government employees and consultants retained in connection with the working group effort were paid, and identified any contractual relationships that were entered into by the government with those special government employees and consultants;

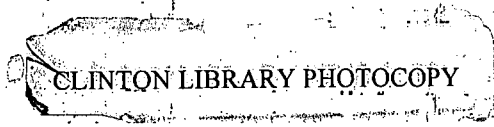
listed the names of all working group members who completed financial disclosure forms (SF 278 or SF 450), and explained that special government employees and consultants were required to attend ethics briefings and consultations; and

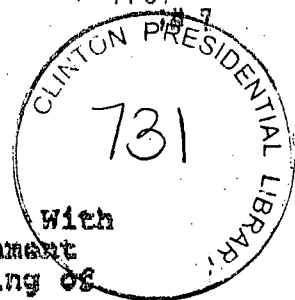
identified those special government employees who were reimbursed for travel expenses, and listed each White House Office special government employee who received reimbursement for travel and the dates of that travel.

At the same time, the government has objected to a number of plaintiffs' discovery requests on grounds that they seek information not relevant to the working group's purpose, structure and personnel. Thus, for example, the government has argued that contents of financial disclosure forms, records showing the amounts that working group members were paid, expense reimbursement forms, and substantive agendas and minutes of working group meetings are not probative of any issues that the district court must now determine. The district court has yet to rule that any such information must be produced by the government.

On the other hand, the government has never suggested that its records are "inaccurate" or that any records that were created are now "lacking." Nor has Judge Lamberth or any other court entered an order, or made any findings, to that effect. The question of whether records exist is not even presently pending before the district court; the only issue now being considered by the court is whether the government has adequately responded to plaintiffs' discovery request, and whether certain categories of documents requested by the plaintiffs are even relevant to the suit.

Thus, there is simply no basis for the Washington Times' assertion that "records are so incomplete that the administration can't even determine who served on the task force." The membership of the Task Force -- composed of the First Lady, cabinet secretaries and senior White House staff --





PARTICIPANTS

has been a matter of public record since January 25, 1993. With respect to the interdepartmental working group, the government has, as noted, already produced in litigation a full listing of the over 500 working group members and their affiliations. Justice Department attorneys and White House staff devoted substantial effort to ensuring the accuracy of these lists. ~~It is merely a reflection of the government's candor that the discovery response in the pending litigation acknowledges that these lists may not account for every instance of attendance by particular individuals at each of the over 1000 meetings of the various "cluster" groups, subgroups, audit groups or outreach groups.~~

THE DISCOVERY RESPONSE EXPLAINS HOW THE LIST WAS CREATED AND COMPILED

WHO MAY HAVE ATTENDED ONE OF THE THOUSANDS OF WORKING GROUP PARTICIPANTS AND THAT "SIGN-IN" LISTS WERE NOT PREPARED FOR THE MAJORITY OF THESE MEETINGS.

Similarly:

-- No basis exists for the Washington Times' assertion that the government did not "know how much consultants were paid." The government has disclosed which consultants were paid, has argued that the amount of such payment is irrelevant to the pending litigation, and has disclosed that most consultants and other special government employees were not paid in any event.

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and

-- No basis exists for the Washington Times' assertion that the government "shrugged off the need" to comply with ethics rules and does not know who filled out ethics forms. The government has disclosed the names of those working group members who completed financial disclosure forms, and has explained that special government employees and consultants were required to attend special ethics briefings. The government has argued that the ethics forms and their contents are irrelevant to the issues to be decided by the Court, but has never suggested that compliance with applicable ethics regulations was either not required or unimportant.

-- No basis exists for the Washington Times' assertion that the government failed to maintain expense and travel vouchers and does not know "if travel expenses were reimbursed." The government has argued that this information is not relevant in the pending suit, but has nonetheless provided the plaintiffs with detailed information on reimbursement of travel expenses. To date, the plaintiffs have not actively sought production of any expense materials unrelated to travel.

Nor, finally, does any basis exist for the Washington Times' suggestion that the government failed to fulfill any

